

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOANN BLAKE, et al.,

Plaintiffs,

v.

BLUE SHIELD OF CALIFORNIA  
SEVERANCE PLAN and BRUCE G.  
BODAKEN,

Defendants

No. C 06-1582 MMC

**ORDER DENYING AS MOOT  
DEFENDANT BLUE SHIELD OF  
CALIFORNIA'S MOTION TO DISMISS;  
VACATING HEARING**

Before the Court is defendant Blue Shield of California's ("Blue Shield") motion to dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, plaintiffs' initial complaint. On April 4, 2006, plaintiffs filed a First Amended Complaint ("FAC").

A party may amend a pleading "once as a matter of course at any time before a responsive pleading is served." See Fed. R. Civ. P. 15(a).<sup>1</sup> "[A]n amended pleading supersedes the original, the latter being treated thereafter as non-existent." Bullen v. De Bretteville, 239 F. 2d 824, 833 (9<sup>th</sup> Cir. 1956), cert. denied, 353 U.S. 947 (1957). Further, the FAC no longer names Blue Shield as a defendant; rather, the FAC names a severance plan, specifically, the Blue Shield of California Severance Plan, and an individual

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<sup>1</sup>A motion to dismiss is not a "responsive pleading." See Crum v. Circus Circus Enterprises, 231 F. 3d 1129, 1130 n. 3 (9<sup>th</sup> Cir. 2000).

1 defendant, Bruce G. Bodaken, as the administrator of the severance plan.

2 Accordingly, the Court hereby DENIES as moot Blue Shield's motion to dismiss, and  
3 VACATES the hearing scheduled for May 5, 2006.<sup>2</sup>

4 **IT IS SO ORDERED.**

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6 Dated: April 6, 2006

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8 MAXINE M. CHESNEY  
9 United States District Judge  
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27 <sup>2</sup>Blue Shield's motion for sanctions pursuant to Rule 11 remains as scheduled on the  
28 Court's May 5, 2006 hearing calendar. See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384,  
395 (1990) (holding motion under Rule 11 may be heard following dismissal of action).